Introduction

Welcome to the latest edition of our UK Bribery Digest. We comment on six cases that have been completed over the past six months, bringing the total number of cases that we have reviewed since 2008 to 77.

Four of these cases have corporate data at their heart and highlight that information is something of value that corrupt parties are willing to buy and sell. Whilst this might be more obvious for procurement information, one of the cases concerns the sale of claimant data held by an insurer. Another case we comment on features a classic scenario: the overseas bribe to win a contract. The unusual feature of this case is that it involved a single one-off payment, which opened up a much broader scope of investigation of the company.

The Bribery Digest focuses on commercial bribery cases, but we do from time to time also include cases that relate to attempts to undermine the enforcement of relevant laws, on the basis that the laws cannot be effective without their effective enforcement. The case in question concerns attempted bribery of the jury in an insurance fraud case.

In December 2017 the Home Office published the UK Anti-Corruption Strategy 2017-2022. It is ambitious in scope and sets out a total of 103 action points across six priorities and a further 31 commitments regarding implementation. It addresses many aspects of both domestic and global corruption. We provide an overview of the strategy and summarise a selection of the action points that appear to us as likely to have a more immediate impact for private sector anti-corruption programmes and compliance, and for commercial activities in the public sector.

We also reflect on enforcement action in the United States in the wake of the Deferred Prosecution Agreement with Rolls-Royce in the UK that was finalised in January 2017.

In this issue we also look at the introduction of the UK’s new Corporate Criminal Offence of failure to prevent the facilitation of tax evasion (CCO), examining to what extent lessons can be learned from the implementation of the Bribery Act when building a compliance programme for CCO.

As usual, we have updated our table of completed UK bribery and corruption cases, which covers the past 9 years.

We hope you enjoy this edition of the Bribery Digest and find it useful in your work.

Jonathan Middup
Partner, UK Head of Anti-Bribery and Corruption
jmiddup@uk.ey.com
@jonathan_middup
UK Anti-Corruption Strategy 2017-2022

In December 2017 the Home Office published the UK Anti-Corruption Strategy 2017-2022 (the strategy).

Our observations on the strategy

Our principal observations are as follows:

- The strategy is ambitious in scope, addressing many aspects of both domestic and global corruption. It sets out a total of 103 action points across six priorities and a further 31 commitments regarding implementation.

- The strategy is supported by a focus on implementation, involving the Prime Minister’s Anti-Corruption Champion, a new Minister for Economic Crime in the Home Office and the Joint Anti-Corruption Unit (JACU), which has now transferred into the Home Office. There will be an annual written update to parliament on progress made under the strategy.

- There is a particular emphasis on public sector corruption. 16 of the 103 action points specifically address reducing corruption in public procurement and grants. The strategy notes that in 2015/16, HM Treasury figures showed that the UK public sector spent a total of £226bn on procurement of goods and services (approximately a third of total spending) and that grants represented a further £130bn. It asserts that this amount of expenditure, together with the levels of interaction between officials, business and other stakeholders, creates risks of corruption and fraud that need to be effectively managed. A further 11 action points address corruption in the public functions of policing and border control. At least a further seven action points concern the public sector specifically, including most notably establishing over the next two years a ‘Counter-Fraud and Corruption Profession across the Civil Service, based on professional standards and competencies that include anti-bribery and corruption’.

- There is also a particular focus on developing pro-transparency and anti-corruption measures internationally, reflecting a key basis of the strategy that both the UK’s security and prosperity benefits from reduced corruption globally. The strategy states the intention to drive an international revolution in transparency, opening up budgets, and supporting citizens and key organisations to use information and data to create stronger accountability. 33 of the 103 action points cover improvements in the ‘business environment globally’ and ‘working with other countries to combat corruption’.

- A potentially significant matter for the private sector is that the possible extension of corporate criminal liability beyond bribery and tax evasion to wider economic crimes remains on the agenda. The strategy includes consideration of the findings of the Call For Evidence in January 2017 in this regard and, if appropriate, consultation on how new offences might be introduced.
Defining a longer-term cross-governmental framework

The Government presents the strategy as an ambitious, cross-governmental longer-term framework to guide UK Government efforts to tackle corruption at home and abroad in the period to 2022, leading to:

- Reduced threats to national security, including instability caused by corruption overseas.
- Stronger economic opportunities, especially for British business.
- Greater public trust and confidence in the UK’s domestic and international institutions.

The strategy sets out six priorities for this Parliament:

1. To reduce the insider threat in high-risk domestic sectors such as borders and ports.
2. To strengthen the integrity of the UK as an international financial centre.
3. To promote integrity across the public and private sectors.
4. To reduce corruption in public procurement and grants.
5. To improve the business environment globally.
6. To work with other countries to combat corruption.

The strategy states that it will ensure that efforts are joined up across government and will include close collaboration with civil society, private sector, law enforcement, and other partners who play a critical role in tackling corruption.

The strategy also states that it builds upon the UK’s existing anti-corruption efforts, including the December 2014 Anti-Corruption Action Plan (on which we commented in Bribery Digest Edition 6), the 2016 London Anti-Corruption Summit, the National Security Strategy, the Serious and Organised Crime Strategy, the Action Plan for Anti-Money Laundering and Counter-Terrorist Finance, and the Fighting Fraud and Corruption Locally Strategy.

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"In 2015/16, [HM Treasury figures show that] the UK public sector spent a total of £226bn on procurement of goods and services, approximately a third of total spending... Grants represented a further £130bn, equivalent to the UK's healthcare spending... This level of expenditure, together with the levels of interaction between officials, business and other stakeholders, creates risks of corruption and fraud that need to be effectively managed, and explains why these sectors are a priority.”

UK Anti-Corruption Strategy 2017-2022

“We will drive an international revolution in transparency, opening up budgets, and supporting citizens and key organisations to use information and data to create stronger accountability.”

UK Anti-Corruption Strategy 2017-2022
UK Anti-Corruption Strategy
2017-2022

Goals and actions for the six priorities
These tables summarise the 103 action points across the six priorities, as set out in the Anti-Corruption Strategy, which appear to us as likely to have a more immediate impact for private sector anti-corruption programmes and compliance, and for the commercial activities in the public sector. The actions relate to England and Wales, Scotland and Northern Ireland unless stated otherwise.

1. Reduce the insider threat in high-risk domestic sectors such as borders and ports
   (11 action points in total)

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<tr>
<td>Reduced vulnerability to corrupt insiders in four critical sectors (borders, prisons, policing and defence)</td>
<td>Implement a comprehensive programme of work to understand, manage and mitigate the vulnerabilities that could be exploited by corrupt insiders at UK airports, maritime ports and international rail terminals. Deliver a programme of work to address the vulnerability posed by corrupt employees in the defence sector to inform future policy and put in place appropriate measures to mitigate the threat.</td>
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<td>Increased awareness of the insider threat in higher risk sectors</td>
<td>Consider the findings of the Law Commission Review of the Misconduct in Public Office offence, when published, and set out a government response to the recommendations for reform of common law offence.</td>
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## Strengthen the integrity of the UK as an international financial centre
(25 action points in total)

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<td>Greater transparency over who owns and controls companies and other legal entities</td>
<td>Publish a draft bill in this session of Parliament for the establishment of a public register of beneficial ownership of overseas legal entities to provide this information when they own or purchase property in the UK or are participating in central government contracts. Carry out a statutory review of the implementation of the 2016 bilateral company beneficial ownership arrangements with our Overseas Territories and Crown Dependencies for the period ending December 2018 to assess whether the new arrangements have been effective – in particular whether they have resulted in improved law enforcement outcomes – and to consider if these need to be strengthened further.</td>
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<td>Stronger law enforcement, prosecutorial and criminal justice action</td>
<td>Implement all key elements of the Criminal Finances Act, including Unexplained Wealth Orders, by the end of April 2018 (subject to parliamentary time). Strengthen our ability to investigate tax evasion and other economic crime, using the multi-agency Joint Financial Analysis Centre to gather data, develop intelligence and conduct analysis. Amend Schedule 3 of the Crime and Courts Act to add the SFO to the list of organisations the Director General of the National Crime Agency (NCA) can directly task to investigate a case of economic crime. Consider the findings of the Call For Evidence that in January 2017 proposed extending corporate criminal liability beyond bribery and tax evasion to wider economic crimes. If appropriate, consult on how new offences might be introduced. Strengthen law enforcement capacity and capability by implementing an innovative counter bribery and corruption training programme from December 2017.</td>
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| Further enhance anti-money laundering and counter-terrorist financing capability | Work with supervisors to fully embed the new Money Laundering Regulations that were introduced in June 2017, which give effect to the revised Financial Action Task Force (FATF) standards and transpose the 4th EU Money Laundering Directive. These regulations require firms to apply enhanced due diligence to all politically exposed persons (PEPs) on a risk-sensitive basis, and are complemented by guidance published by the Financial Conduct Authority (FCA) in July 2017 which clarifies the risk-based approach that firms should take in their treatment of PEPs.
Create a new Office for Professional Body Anti-Money Laundering Supervision (OPBAS) to be fully operational by the beginning of 2018, hosted by the FCA, to help and ensure that professional body Anti-Money Laundering (AML) supervisors implement their supervisory obligations to a consistently high standard, and work across the regime to share best practice and facilitate the flow of information with law enforcement. |
| Stronger public-private partnership, to share information and improve targeting of those who pose greatest risk | Increase the analytical capability of the Joint Money Laundering Intelligence Task Force, and continue to expand its membership to include more banks and other financial services firms. Reform the Suspicious Activity Reports regime, upgrading capabilities (including IT) and making the necessary legislative, operational and technical changes. |
# UK Anti-Corruption Strategy

## 2017-2022

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<td><strong>Greater public sector resilience against the threat of corruption</strong></td>
<td>In the next two years, establish a Counter-Fraud and Corruption Profession across the Civil Service, based on professional standards and competencies that include bribery and corruption.                                                                pcion across the Civil Service, based on professional standards and competencies that include bribery and corruption. Assign a senior lead in every central government department for bribery and corruption, who is a trained and qualified member of the Civil Service Counter-Fraud Profession. Include in the Government’s Counter-Fraud Functional Standards counter corruption standards that all departments will follow. Publish details of the amount of fraud and corruption detected every year in central government and, alongside this, the details of which departments are following the Counter-Fraud and Corruption Functional Standards.</td>
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<td><strong>A more open government that is trusted by citizens, with robust protections for whistleblowers</strong></td>
<td>Review in 2017-18 the effectiveness of Business, Energy and Industrial Strategy (BEIS) Whistleblowing Guidance for Employers and Code of Practice. This aims to ensure that more employers follow good practice when responding to disclosures relating to whistleblowing. Review in 2018-19 the recent changes to the whistleblowing framework, as introduced by the Enterprise and Regulatory Reform Act 2013.</td>
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<td><strong>Strengthen UK private sector integrity</strong></td>
<td>Investigate weaknesses in business frameworks if they arise, and take action where necessary. For example, in March 2017 the Government completed a call for evidence on the use of limited partnerships, in response to concerns that they may be vulnerable to misuse. The Government is actively considering options and will announce next steps soon. As the Financial Reporting Council updates its Guidance on the Strategic Report (incorporating changes arising from the UK implementation of the EU Directive on non-financial reporting) include guidance for disclosures on anti-bribery and corruption.</td>
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<td><strong>Greater integrity in domestic and international sport</strong></td>
<td>Implement the provisions in the Cross-Government Sport Strategy, Sporting Future, to protect the integrity of sport.</td>
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## 4. Reduce corruption in public procurement and grants
(16 action points in total)

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| **Greater procurement transparency, enabling better identification and mitigation of corruption risks** | Undertake a review of procurement risks in local government by the end of 2018. This will be led by the Secretary of State for the Department of Communities and Local Government in collaboration with the Prime Minister’s Anti-Corruption Champion.  
Explore ways to deliver a more collaborative approach in the Ministry of Defence’s supply chain, with the aim of entrenching a strong anti-corruption culture. This will include hosting a conference with key suppliers in 2017 to identify opportunities for closer anti-corruption working. |
| **Strengthened awareness and capability within contracting authorities**     | Help procurers detect and deter illegal bid rigging by increasing the uptake of the Competition and Market Authority’s (CMA) online training and guidance materials.  
Encourage local authorities to make better use of the National Fraud Initiative data matching service and associated data matching tools, which enable the identification of potential fraud and corruption.  
The Ministry of Defence will explore the use of anti-corruption data analytics to provide assessments across the whole life of the procurement cycle, utilising data-sharing approaches such as the National Fraud Initiative. |
| **Greater confidence in efficient and legitimate contract management**    | Produce specific guidance to assist procurers to identify and tackle corruption: by February 2018 produce and disseminate guidance to government procurers on applying exclusions in the procurement process, managing conflicts of interest and whistleblowing, and embed this.  
Oversee the effectiveness of the new NHS Counter Fraud Authority (established in November 2017). |
## 5. Improve the business environment globally

**Goals** | **Actions**
---|---
**Reduced impact of corruption on trade and investment internationally** | Support other countries, bilaterally and at multilateral fora, to actively implement international anti-corruption standards, especially the OECD Anti-Bribery Convention; offer support where appropriate to those countries wishing to accede to the convention (including technical assistance and capacity building support).

Work in up to 35 countries to support ‘ease of doing business’ and trade facilitation reforms. This includes capacity building and technical assistance aimed at developing robust legislation and transparency standards, promotion of e-procurement platforms, reducing corruption at ports and border points. This will be delivered through UK Government programmes, including through the Prosperity Fund, which makes £1.3bn available over the next five years to promote economic growth in developing countries.

**Enhanced international development finance and export finance practices** | Ensure that investments are underpinned by world-class due diligence and business integrity practice through a strengthened and expanded CDC internal Business Integrity Unit.

Continue to work with like-minded countries at the OECD Export Credit Group to promote higher standards of anti-bribery due diligence by OECD export credit agencies as part of a review expected to conclude in 2017.

Establish a dedicated anti-bribery and corruption due diligence team within UK Export Finance (UKEF) to further strengthen existing capability, and review present policies and procedures to identify any further areas for improvement.

**Increased investment by UK companies in challenging overseas markets with integrity** | Strengthen the support that is available to companies, building on the services and guidance already offered through government digital platforms; work with industry and trade associations to develop initiatives tailored to the needs of UK exporters, including small and medium enterprises (SMEs) and investors.

**Strengthened business-led collective action to reduce corruption** | Work with industry bodies to facilitate the dissemination of the guidance for SMEs as highlighted in the OECD UK Phase 4 Review. This will also address the recommendations offered by the OECD in that review regarding sufficient dissemination of guidance on compliance procedures.

Work with UK business to identify and address specific corruption risks in target markets and sectors, including with reference to the priorities identified in the UK Industrial Strategy.

Encourage other countries to establish reporting mechanisms for high value tender processes, building on the experience of Colombia, Ukraine and Panama.
## Work with other countries to combat corruption (15 action points in total)

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<tr>
<td>Enhanced international transparency, especially in beneficial ownership, extractives, public finance and contracting</td>
<td>Enhance global standards of extractives transparency, including project-level reporting; continue to champion the Extractive Industries Transparency Initiative (EITI) domestically, and support developing countries to comply with the EITI Standard, including its requirement to include beneficial ownership disclosure by 2020; complete a post-implementation review of the 2014 Reports on Payments to Governments Regulations. Support 15 developing countries to make a measurable improvement in their level of fiscal transparency, accountability and citizen participation by 2020 (as measured by the Open Budget Survey scores). Support 16 countries to implement more open contracting in public procurement by 2020; encourage more countries to commit to openness across the contracting cycle, from planning to tender, award, contract and implementation.</td>
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<td>Reduced levels of corruption in partner countries</td>
<td>Publish new principles governing compensation to overseas victims of corruption and other economic crime by December 2017, and apply these principles to all relevant cases; support countries to deliver their commitment to develop their own principles and continue to raise awareness internationally with the aim of achieving a consensus that overseas victims should benefit from the positive outcomes of bribery and corruption cases.</td>
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<tr>
<td>Enhanced action to address corruption in fragile and conflict affected states</td>
<td>Promote greater defence sector transparency through domestic reform in up to four countries, as well as internationally, through support to Transparency International’s Defence and Security programme. Promote stronger capabilities to combat corruption in the defence and security sectors in five partner countries or regions by 2019 and support the development of regional Building Integrity centres of excellence in Jordan, Ukraine and Western Balkans.</td>
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Delivering the strategy

The strategy acknowledges that effective implementation across all six priorities will be contingent on a sound understanding of corruption, effective partnerships and strong international engagement. To this end, it sets out (in addition to the 103 action points across the six priorities) a further 31 commitments, including the following relating to governance of strategy implementation:

- The Prime Minister’s Anti-Corruption Champion taking responsibility for helping drive delivery of the strategy as well as representing the Government’s anti-corruption agenda in the UK and internationally.

- A new Minister for Economic Crime in the Home Office will also have oversight of anti-corruption and cross-departmental ministerial oversight of corruption will continue.

- The JACU, which transferred to the Home Office in December 2017, will enable better co-ordination of domestic and international anti-corruption efforts and promote stronger links between anti-corruption and other economic and organised crime. JACU will continue as a joint integrated unit, coordinating anti-corruption work across Government, representing the UK at international anti-corruption forums and providing support to the Anti-Corruption Champion. JACU will also continue to be responsible for maintaining strong relationships with business, civil society and foreign governments.

- Providing an annual written update to Parliament on progress made under the UK Anti-Corruption Strategy, thereby giving it the opportunity to scrutinise the Government’s anti-corruption work.

OECD Phase 4 evaluation on the UK’s implementation of the OECD Anti-Bribery Convention

In Edition 11 of the Bribery Digest we set out a number of findings and recommendations from the OECD Phase 4 evaluation on the UK’s implementation of the OECD Anti-Bribery Convention which reported in March 2017. The UK Anti-Corruption Strategy 2017-2022 acknowledges the OECD evaluation and sets out specific actions in response to three of its key recommendations as follows:

- HMRC will review its approach to bribery and corruption, taking appropriate action on the recommendations of the OECD Phase 4 evaluation.

- Where appropriate the UK will work in collaboration with the Overseas Territories and the Crown Dependencies to review the extension, and implementation of, the OECD Anti-Bribery Convention and the UN Convention Against Corruption.

- The Scottish Government has noted the comments made in relation to the settlement of foreign bribery cases through civil settlements and will consider further the suggestion that a scheme of Deferred Prosecution Agreements (DPAs) be introduced.

More generally, the strategy follows up on all of the recommendations of the OECD Phase 4 evaluation that we set out in Edition 11 of the Bribery Digest, with the following exceptions:

- Regarding the UK’s Crown Dependencies and Overseas Territories, the OECD recommended that their institutional framework and arrangements to respond to international cooperation requests be reviewed. The strategy addresses requests made by UK law enforcement and tax authorities as regards registers of beneficial ownership of companies, but it does not appear to specifically address international cooperation.

- The OECD recommended adopting a systematic approach to allow contracting authorities to easily access information on companies or individuals sanctioned for foreign bribery, including companies sanctioned through court orders, DPAs and other settlements. While the strategy includes a number of actions in public procurement, this is not included.

- As regards UKEF, the OECD had recommended it take a firmer stance which could result in suspending or withdrawing support if applicable. The strategy includes several actions in respect of UKEF, including ensuring that investments are ‘underpinned by world-class due diligence’ but the firmer stance recommended by the OECD is not explicitly recognised in the strategy.

- The OECD recommended ensuring that the SFO’s core budget is sufficient to allow it to adequately and independently carry out its role. SFO funding is not addressed in the strategy.

Final note on the strategy

The Governments states that the strategy is ambitious, and we agree with that description. The strategy is only of value if it is implemented effectively and its ambition makes the implementation more difficult. It is encouraging that the strategy itself specifically addresses its implementation, including the monitoring of the progress. The UK Government is signalling its commitment to and leadership in the ongoing battle against domestic and global corruption and we look forward to reporting on its progress.
Rolls-Royce update

In Edition 10 of the Bribery Digest we commented at length on the significant Deferred Prosecution Agreement (DPA) with Rolls-Royce that was announced in January 2017. We found the DPA remarkable in several respects, including the fact that it reflected the simultaneous completion of parallel co-ordinated enforcement actions against the company in three jurisdictions (the UK, USA and Brazil) in respect of related bribery schemes.

In November 2017, the US Department of Justice (DoJ) and the UK Serious Fraud Office (SFO) made simultaneous announcements that three ex-employees of Rolls-Royce and a former consultant to Rolls-Royce had entered guilty pleas and a former intermediary used by the company had been indicted on various FCPA violations, conspiracy to violate the FCPA, and money laundering charges.

The SFO announcement states that this followed parallel investigations by the US authorities and the SFO into corruption and failure to prevent bribery in relation to the sale of energy systems and related services and that the SFO provided significant assistance to the US authorities throughout the course of their investigation. The pleas and indictment arise from the US authorities’ investigation into Rolls-Royce’s former Energy division and the pleas of the three former Rolls-Royce employees also covered conduct arising from the SFO’s investigation, including conduct which was addressed by the DPA between the SFO and Rolls-Royce in January 2017.

As the DoJ announcement makes clear, the DPA was part of a global resolution to investigations by the DoJ and UK and Brazilian authorities related to the corrupt conduct.

The SFO’s investigation into the conduct of individuals in Rolls-Royce Civil, Defence, Marine and former Energy Divisions continues. The SFO and DoJ continue to cooperate in their parallel investigations, according to the SFO.

The three ex-employees of Rolls-Royce were variously citizens of the UK (resident in Taiwan), the Netherlands and the US; the consultant was an Austrian; and the intermediary a Greek citizen resident in Turkey.

The DoJ charges illustrate:

• The exposure of persons in foreign jurisdictions as a result of extra-territorial legislation: only one of those involved is a US citizen. On a similar theme, we draw attention to case 75 in this edition of the Bribery Digest (FH Bertling and former employees) where three of those convicted are German nationals and none of them are resident in the UK.

• The sophisticated international cooperation that now exists between anti-corruption enforcement bodies in the major economies: both the DoJ and the SFO appear keen to publicise this.

• The likelihood that prosecutions of individuals will follow once the DPA against the corporate entity is resolved; this is emerging as a pattern and cooperation by the company in the subsequent prosecution of the individuals involved is a standard condition of the DPA.
The UK’s new corporate criminal offence: practical lessons from working with our clients

When the UK Bribery Act was introduced into UK law in 2010, it created for the first time the corporate offence of failing to prevent bribery by associated persons (Section 7 of the Bribery Act). This offence has featured increasingly in bribery prosecutions over recent years.

2017 saw the introduction of another “failure to prevent” offence into UK law, the Corporate Criminal Offence (“CCO”) of failure to prevent the facilitation of tax evasion, which became effective on 30 September 2017. This offence resembles the Section 7 offence under the Bribery Act in a number of respects:

- It makes businesses criminally liable for failing to manage the risk.
- It sets out a defence based on having reasonable preventative procedures proportionate to the risk. (The HMRC guidance on reasonable procedures follows the Ministry of Justice (MOJ) guidance in respect of adequate procedures under the Bribery Act.)
- It has extra-territorial reach.
- It adopts the concept of associated persons - such as an employee, agent, contractor or subsidiary acting on behalf of a business.

This resemblance to the Bribery Act prompts the question: to what extent can lessons learned from the implementation of the Bribery Act assist with building a compliance programme for CCO? We offer some insights on this question from our dealings with clients.

The importance of a robust risk assessment

As with a company’s response to the Bribery Act, the starting point for a company that wishes to develop “reasonable procedures” to prevent the facilitation of tax evasion should be to conduct a robust risk assessment.

It is our experience that where companies do not perform a thorough risk assessment to identify the areas of exposure in their particular business the quality of the resulting compliance programme tends to suffer. Indeed, it is hard to see how a company could be deemed to have reasonable procedures to prevent the facilitation of tax evasion if they have not properly identified the risks faced and assessed the extent to which they have controls in place to manage those risks. Furthermore, effort invested in conducting a robust risk assessment can pay dividends in terms of enabling a proportionate response to be built, creating efficiencies by ensuring efforts are properly focused, helping minimise the unnecessary waste of resources and demonstrating that any subsequent actions are grounded in the risks that the business faces.

It is therefore concerning that 19% of respondents to an EY survey in November 2017 (i.e. several weeks after the CCO legislation became effective) stated that their organisation had not yet taken any approach to their CCO risk assessment (Figure 1). It is important that organisations conduct a formal risk assessment and document that this has been done, even if a company subsequently concludes on the basis of this risk assessment that they have limited exposure to CCO risks or that no changes to their existing compliance programme are required.

The scope of the risk assessment

In order that CCO risks are not inadvertently overlooked, it is important that the risk assessment gives appropriate consideration to all aspects of a business’s operations. While this sounds self-evident, in our experience it is not always what happens in practice. For example, we have found that many of the CCO risk assessments carried out by financial services businesses have been very client-focused. This makes sense as this is where the higher risks lie. However other business units – such as human resources, accounts payable, and supplier and vendor management – should not be forgotten.
Businesses must also ensure that they properly consider the risks arising from their associated persons, as we know from past prosecutions for bribery that the main exposure for businesses is often from the activities of third parties rather than from within the businesses themselves.

**Understanding the global implications**

As with the Bribery Act, the reach of the CCO legislation is international and wide-ranging and will for many organisations require a global approach.

When the CCO legislation was first enacted we observed that many businesses initially did not fully appreciate the global reach of the legislation. However, as businesses have studied the CCO more closely, we are seeing more and more organisations deciding to undertake a risk assessment on a group-wide basis as they find that trying to exempt parts of a global organisation can quickly become impractical. Indeed, in the November 2017 EY survey the highest proportion (62%) said their organisation planned to take a global approach to their CCO risk assessment. Of these, 38% had started with a global risk assessment whereas 24% stated that they had started by initially reviewing their UK operations with a plan to expand this to their global operations at a later date. (Figure 1)

**The extent to which existing anti-bribery procedures can assist in responding to the CCO legislation**

Given the similarities in approach between the Bribery Act Section 7 offence and the CCO legislation and the associated guiding principles advocated by the MOJ and HMRC, a question commonly asked by businesses is “what role can existing Anti-Bribery and Corruption (ABC) policies and procedures play when responding to the CCO legislation?”

The guidance is clear that the response of the business should be driven by a risk assessment which considers the specific risks within that particular business, and that an entity must put in place proportionate and bespoke prevention measures based on the unique circumstances of its own business and the risks identified. However, our experience from working with businesses across a range of sectors is that once a risk assessment has been conducted to understand the risks that need to be addressed, it is often possible and may be efficient to build on the existing ABC control framework to address these risks. For example, many companies will already have due diligence procedures in place to manage bribery and other business risks and these existing processes can often be relatively easily augmented to target additional risks.

As a general rule, in the companies we have worked with, the focus has been much more on further developing existing processes and controls already in place for other legislation, rather than building an entirely new set of processes and procedures specifically directed at CCO. This is consistent with the results of the November 2017 EY survey in which only 14% of the respondents anticipated that their CCO implementation efforts would be significant. The majority felt their implementation efforts would be moderate (49%) or minimal (37%) (Figure 2). On the associated question of where the respondents anticipated they would have to invest the most effort to implement a CCO response, the most common answer was updating business processes (36%), followed by communication with key stakeholders and senior leadership (32%), and training (25%) (Figure 3).

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1 The Section 7 offence was cited in the criminal prosecution in December 2015 of Sweet Group plc (case 52), in civil cases in September 2015 against Brand Rex Limited (case 47) and in April 2016 against Braid Group Holding (case 53), and in all three Deferred Prosecution Agreements (DPAs) to date, Standard Bank in November 2015 (case 51), XYZ Limited in July 2016 (case 57) and Rolls-Royce in January 2017 (case 65).

2 The respondents to the survey comprised attendees of the 14 November 2017 EY webinar “A new UK corporate criminal offence with global reach is here. What’s next?” The results have been rebased to exclude any “not applicable” responses.
The UK’s new corporate criminal offence: practical lessons from working with our clients

Which part of the business should lead the response?
As with the UK Bribery Act, the CCO is a broad regime and affects many different business units. In our experience, the most robust responses also take a broad approach and involve a wide range of different stakeholders across the business when performing the risk assessment and when implementing any changes. Relevant stakeholders might typically include tax, legal, compliance, risk, internal audit, finance, supply chain and anyone who has specific knowledge of areas of business that are likely to be higher risk.

How does a business determine what are reasonable procedures?
Much of the debate when the UK Bribery Act was first introduced was around what constituted “adequate procedures”, and similarly the key question for tax, compliance and legal teams as they develop their response to the new CCO legislation is how the enforcement authorities will define “reasonable procedures”.

As is the case with the Bribery Act, the line of defence for the new CCO rests upon proportionality. It is clear that HMRC is not expecting organisations to put in place fail-safe procedures to stop their clients and customers from committing tax evasion, or stopping the de facto tax evasion itself. Rather, it expects businesses to take a risk-based approach and to be doing all that is reasonable to prevent their people, service providers and third parties acting on their behalf from being knowingly concerned in facilitating tax evasion by third parties globally.

Companies looking for further help in interpreting the HMRC guidance can look to additional industry specific CCO guidance where this exists (for example, that issued for the financial services industry). Benchmarking a company’s response against what others in the industry are doing can also be a useful way of gauging whether a company is significantly behind the curve with respect to its peers. Companies should also be looking internally at their own determination of what are adequate procedures under the UK Bribery Act as there are a number of parallels to draw.

The ultimate goal should be to embed CCO reasonable prevention measures into an organisation’s business-as-usual model, as businesses that view this as purely a policy or training exercise or a “tick box” compliance exercise are highly unlikely to be able to show they have met the standard of reasonable procedures.

However, as with Bribery Act compliance, whether or not procedures are reasonable is a difficult judgement that the business itself, supported by its advisors, has to make.
Cases in the second half of 2017

Desmond Tough (December 2017)

Mr Tough (51) worked as a Valuation Officer on behalf of Aberdeen City Council, valuing properties being sold by both the city council and the Grampian Housing Association. On 8 occasions between December 2014 and May 2015 he went to inspect the properties being sold under the Right to Buy legislation before sending a message to the prospective buyers offering to knock down the price in exchange for a sum of money. The amounts asked for varied from £75 to £500. He received about £2,000 in the scam.

Numerous people he approached contacted the legal teams of the city council and housing association and Mr Tough was eventually questioned by police in July 2016.

Mr Tough admitted the eight charges of bribery and was jailed for 18 months. The sentencing Sheriff commented that “because of the breach of public trust there is no alternative to a custodial sentence.”

The case is yet another illustration that corruption does not require access to funds. The ability to manipulate valuable data is sufficient.

Raja and Jonaade Hussain and others (November 2017)

The Bribery Digest focuses on commercial bribery cases, but we do from time to time also include cases that relate to attempts to undermine the enforcement of the relevant laws, on the basis that the laws cannot be effective without their effective enforcement. This case concerns attempted bribery of the jury in an insurance fraud case.

The accused were on trial for manslaughter and fraud arising from a deliberately staged vehicle collision in which an innocent participant sustained injuries that proved fatal.

The accused arranged for a fire alarm to be activated during the trial. During the evacuation, five jurors were approached by a 15 year old girl engaged by the accused and offered bribes of £500 to the jurors to return not guilty verdicts. The jurors notified the judge of these acts, who dismissed the jury and – invoking a rarely used power – heard the rest of the evidence alone.

The sentencing in this case for conspiracy to pervert the course of justice was as follows: Raja Hussain (31) and Jonaade Hussain (27) 15 years each; Shahrear Islam-Miah (27) 6 years; Abdilahi Ahmed (26) 4 years and 6 months; Jamie Lee Lawson (28) 3 years and 1 month; Waqas Ahmad 2 years and 9 months; Zafarullah Ahmad (21) 2 years. The prosecution of the 15 year old girl was not pursued after psychological evidence showed that she had the intellectual capacity of an 8 year old child.
F.H. Bertling Ltd and former employees (October 2017)

F.H. Bertling Ltd and six current and former employees were convicted on a single count of conspiracy to make corrupt payments, contrary to Section (1) of the Criminal Law Act 1977 and Section (1) of the Prevention of Corruption Act 1906 (the bribe pre-dates the Bribery Act) to an agent of the Angolan state oil company, Sonangol, in relation to F.H. Bertling’s freight forwarding business in Angola and a contract worth approximately US$20mn.

F.H. Bertling was part of the long-established Bertling Logistics Group which was founded in Germany but now has sixty offices worldwide including, at the relevant time, the UK. It owns and operates a fleet of ocean-going vessels across worldwide locations, handling a large variety of cargoes and specialising in delivering cargo to challenging or remote locations. This prosecution relates to the activities of the UK company.

The single count of bribery involved a payment of US$250,000 made by a former subsidiary of the company in 2006. The single payment was made to a third party in Angola. The prosecution case was that the payment was made to further F.H. Bertling’s business operations in that country.

Joerg Blumberg (71), Dirk Juergensen (46) and Marc Schweiger (47) (all German nationals and none of them resident in the UK) were each given a twenty month sentence suspended for two years, fined £20,000 and disqualified from being company directors for five years.

Jose Morreale (62), Stephen Emler (49) and the company itself (F.H. Bertling Ltd) pled guilty and their sentencing is pending the completion of connected proceedings in 2018.

Ralf Petersen (73) had also pled guilty but has since died.

The SFO led the investigation. In 2014 F.H. Bertling self-reported regarding “principally historical trading practices in Azerbaijan”. It is understood that the SFO continues to investigate F.H. Bertling’s dealings in other jurisdictions.

We comment as follows:

- In a clarification statement Bertling Logistics Group stated that the payment of US£250,000 had been made “to enable release of a payment for work contractually done by the former subsidiary (F.H. Bertling Ltd has been deconsolidated and sold to a third party) and to protect the livelihoods of its employees in the country”. Both purposes cited in this statement – the need to get paid for work done and to protect the livelihood of employees – may attract sympathy, but they are not defences under UK anti-bribery legislation.
- The case is unusual in that it involved a single bribe, albeit one of significant size. More commonly, there is a pattern of bribery over a sustained period of time. We note, however, that the SFO continues to investigate F.H. Bertling’s dealings in other jurisdictions.
- A feature of this case is the seniority of the persons involved. At the time of the bribery, Messrs Petersen, Juergensen and Blumberg were board directors of F.H. Bertling, and subsequently managing directors of Bertling Group. These senior persons were dispersed across variously the UK, Italy, Germany and sub-Saharan Africa.
- As the sentencing of the company is pending, it is not yet known what benefit of self-reporting the company may have earned. We note that this prosecution relates to Angola and the limited public information that is available indicates that the self-report was in respect of Azerbaijan.

The sentencing of the individuals in this case has prompted criticism from Transparency International. It has described the sentences as falling “well short of what is necessary to act as a serious deterrent against UK companies engaging in corrupt activities abroad... Given the significant damage caused by corruption and the fact that it is a criminal offence, these three individuals have got off lightly. Corruption is never a victimless crime, and when corrupt payments are made in oil deals they often embed the power of corrupt kleptocrats who make the lives of ordinary people a daily misery. Proper penalties are needed both as punishment and deterrent, including time in prison, lifetime suspensions from Directorships and fines that match the extent of the gain.”
The Nawaz brothers induced Underhill, Clarke and Bowen, who worked at one of the leading insurers, to hand over more than 700 pieces of confidential data about customers who had been involved in vehicle collisions, which the brothers then sold to claims management companies to prompt a personal injury claim. The brothers paid the three employees a total of £7,000.

It was found that the three employees would write the relevant customer data on their notepads whilst at work, take photographs of this and then pass the information via WhatsApp to the two brothers. They would also discuss payments for the data in their WhatsApp conversations.

The investigation was conducted by the City of London Police’s Insurance Fraud Enforcement Department, with the cooperation of the insurance company. This followed a report to Action Fraud, the national fraud reporting centre for fraud and cybercrime in November 2015.

The offenders received sentences of between four to twelve months which were suspended for between 15 to 18 months. Other cases noted in the Bribery Digest involving the corrupt sale of data by insurance company employees are cases 63 and 71.
This case concerns corruptly obtained contracts to work on the Crossrail project, specifically in respect of upgrade work at Farringdon station in 2010.

During 2010, Alandale Rail Limited (“Alandale”), through Mr Zayya and Mr McKee, made corrupt payments of at least £140,000 to Mr Obiekwe (a senior manager in CoLOR, the organisation responsible for health and safety procedures on the project and referred to by Mr Zayya and Mr McKee as “our man in Havana”) in order to secure a contract and additional work to supply safety critical staff. Information Mr Obiekwe provided to Alandale ensured that it could undercut bids made by competitors. The initial value of the contract was £2.1mn but eventually rose to £5.2mn.

After Alandale was appointed, Mr Obiekwe and the other defendants were part of a scheme to defraud CoLOR by claiming for “ghost workers”. Claims were fraudulently made to CoLOR for work purportedly undertaken by safety critical staff working for Alandale. Payments were claimed for workers who never attended the site or carried out any work and invoices and timesheets were falsified to disguise the bogus claims.

Mr Waring’s company, Quiltas, was used as a channel for payments to Mr Obiekwe.

The case followed an investigation by the British Transport Police (“BTP”) after Mr McKee became a whistleblower and contacted both CoLOR and the mayor’s office at City Hall in 2011. The fraud team at Transport for London then alerted BTP.

Mr Obiekwe (42), Mr Zayya (51) and Mr Waring (56) were each imprisoned for two years and disqualified from being a director for eight years. Mr McKee (57) was sentenced to 12 months imprisonment and also disqualified for eight years from being a director. The company Alandale was fined £25,000.

We comment as follows:

• The case highlights the corruption risk that may sit within a joint venture. Mr Obiekwe was a senior manager in CoLOR, a joint venture between Costain and Laing O’Rourke. A risk with joint ventures is that the responsibility for managing corruption risk is not properly owned by any of the participants.

• This is the first corruption investigation, of which we have become aware, that was conducted by BTP.

• The corrupt situation was disclosed through whistleblowing, once more illustrating the importance of a whistleblowing mechanism in the discovery of bribery. What is unusual in this case, but not entirely unknown in our experience, is that one of the parties to the bribery became the whistleblower.

• The unauthorised release of information by a procurement officer for the advantage of a bidder in return for corrupt payments is a common feature of several of the corrupt schemes summarised in the Bribery Digest. It is essentially the same scheme as that used by Wassim Tappuni, as described in this edition (case 72), and also featured in cases 23, 46 and 60.
Mr Tappuni describes himself as an Independent Hospital & Health Care Equipment Expert based in Kingston upon Thames, with 30 years of experience in 27 countries. In July 2017 he was found guilty of 13 counts of conspiracy to corrupt between 2007 and 2011. He was sentenced to six years imprisonment and disqualified from being a director of a company for ten years.

He had been engaged as a short-term consultant to represent the interests of the World Bank and the United Nations Development Programme in the bidding process for 16 bank-financed medical projects in 13 countries (across Europe, the Middle East and Central Asia). As part of that role he was required to review highly confidential documents and to evaluate the technical aspects of bids submitted by bidding companies. However, the Court found that he provided corrupt assistance to bidding companies. In return, he received a prearranged percentage of the contract value when the bidding company with whom he had the corrupt arrangement was successful. It was found that he received some 65 corrupt payments totalling £1.7mn in respect of around £43mn in contracts. The monies were received under false invoices and much of it was paid into bank accounts in Switzerland. None of the £1.7mn he received was declared so no tax was paid.

The corrupt activities of Mr Tappuni included:

- Providing drafts of tender bids to companies paying him.
- Changing specifications to suit particular suppliers or disqualify competitor bidders.
- Assisting with making complaints aimed at damaging rival bids.

It is reported that Mr Tappuni negotiated a commission with the medical equipment suppliers of between 2% and 5%, some codified in a written agreement in which he used an alias, with payments made through an intermediary to a Swiss bank account. In other instances he worked based on an agreed flat fee.

Dutch investigators uncovered irregularities in the contracts in September 2011. The UK based investigation, which took six years, was conducted by the City of London Police who received considerable assistance and co-operation from the World Bank and investigators across Europe.

This case is of interest as it illustrates the potentially broad implications of corruption concerning the World Bank funded projects as the World Bank may:

- Blacklist entities involved in the corrupt contracting.
- Notify prosecution bodies in the countries involved, where it believes there is relevant evidence.
- Alert other bodies, such as the Development Program, involved in similar contracting.

It is reported that the World Bank has:

- Sanctioned at least eight companies involved in making the corrupt payment to Mr Tappuni. The sanctions are typically in the form of debarment from participation in the World Bank tenders, for periods of between one and 14 years.
- Prompted at least five other criminal probes in Germany, Austria, the Netherlands, Romania and Switzerland, some of which are against the medical supplies companies.

We also highlight that:

Mr Tappuni’s actions follow a classic pattern of procurement fraud. The case highlights the need to apply compliance standards for short-term consultants, perhaps even to enhance them to reflect heightened risk. Consultants may not be imbued in the compliance culture of the organisation or share a loyalty to it, they may slip through routine compliance procedures, and they may be emboldened in their actions in the knowledge that the risk of being brought to book is reduced when their contract terminates. Predatory fraudsters seek to exploit such weaknesses by moving from one situation to another (although there is no evidence that this was Mr Tappuni’s modus operandi).

This case calls to mind the prosecution of Guido Bakker and Sijbrandus Scheffer (case 46 in September 2015): they too were UN consultants purportedly supporting medical programmes in the developing world who disclosed data to favour a bidder in return for bribes (of US$1mn in their case).
Abbreviations

ABC  Anti-bribery and corruption
AML  Anti-Money Laundering
CoLP  City of London Police
COPFS  Crown Office & Procurator Fiscal Service
CPS  Crown Prosecution Service
CJA  Criminal Justice Act 1967
CLA  Criminal Law Act 1977
CPS  Crown Prosecution Service
CRO  Civil Recovery Order
CRU  Civil Recovery Unit
DoJ  US Department of Justice
DPA  Deferred Prosecution Agreement
FCA  Financial Conduct Authority
FCPA  Foreign Corrupt Practices Act
FSA  Financial Services Authority (former name of the FCA)
FSMA  Financial Services and Markets Act 2000
MPS  Metropolitan Police Service
MOJ  Ministry of Justice
NCA  National Crime Agency
OECD  Organisation for Economic Co-operation and Development
PCA  Prevention of Corruption Act 1906
POCA  Proceeds of Crime Act 2002
SAR  Suspicious Activity Report
SEC  Securities and Exchange Commission
SFO  Serious Fraud Office
SOCA  Serious Organised Crime Agency
SOCD  Serious Organised Crime Division

Contacts

Forensic & Integrity Services

Jonathan Middup
+ 44 121 535 2104  jmiddup@uk.ey.com

David Lister
+ 44 131 777 2308  dlister@uk.ey.com

Steve Caine
+ 44 20 7951 4433  scaine@uk.ey.com
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